



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CONCORD FIREFIGHTERS, LOCAL 1045
(GUY NEWBURY)

Complainant

v.

CITY OF CONCORD, N.H.

Respondent

CASE NO. F-0101:19

DECISION NO. 91-32

APPEARANCES

Representing Concord Firefighters, Local 1045:

Thomas F. Hersey, Esq., Counsel

Representing City of Concord, N.H.:

Paul F. Cavanaugh, Esq., City Solicitor

Also in attendance:

Brian W. Braley, Personnel Director
Guy Newbury, Vice President, Local 1045
Harold Richardson, President, Local 1045

BACKGROUND

This case involved the alleged failure on the part of the City of Concord (City) to implement an arbitrator's award and refusing to reconsider promotions made in accordance with the July 1989 listing.

The City admitted to the process used however denied that the arbitrator's finding of non compliance with the personnel rules rendered the selections for the lieutenant positions under the old test procedure invalid and that in addition to reranking the scores, it had to effectuate the remedy by rescinding its promotion selection under the old test procedure and consider the top three candidates utilizing the list that was reranked on or about May 21, 1990. Also, even if it were to rescind the promotions of Firefighter Paskalis and Lowd, they would be among the three top candidates and could be chosen for promotion. The City confirmed their promotions.

Hearing in this matter was held in the Board's office on July 17, 1990 with all parties represented.

FINDINGS OF FACT

1. On March 11, 1989, Local 1045 by Guy Newbury filed a grievance in accordance with the grievance procedure outlined in the CBA which required compliance with the Personnel Regulations, Sections 34.5.3 and 34.6.3 which controlled this matter.
2. The grievance followed the procedure up to and including arbitration.
3. Arbitrator John Van N. Dorr, III, Esq. did hear this matter on June 14, 1989.
4. The issues submitted to Atty. Dorr were: (a) Did the City violate the CBA and/or Personnel Regulations, Sections 34.5.3 and 34.6.3 by its use of the minimum qualifications worksheet? And, if so what should the remedy be, and, is the above issue arbitrable?
5. The Arbitrator on July 3, 1989 found that the grievance was arbitrable.
6. On July 28, 1990, the City filed a Petition for Declaratory Judgment with PELRB seeking to overturn the arbitrator's decision. (Case No. F-0101:18). The basis of their request was whether or not the matter should be determined under those rules and whether or not, the matter was a prohibited subject to bargaining under the provisions of RSA 273-A:3, III as part of the policies and practices of a merit system related to an examination appointment in an advancement under the managerial policy within its exclusive prerogative.
7. The arbitrator sustained the grievance on November 5, 1989 and ordered the City to rerank the examinees according to their scores on the examinations taken in April, 1989.
8. On January 11, 1990, PELRB after a hearing, dismissed the City's petition for Declaratory Judgment (See PELRB Decision 90-02).
9. The City filed a Motion for Reconsideration which was denied by the Board on April 16, 1990.
10. The City appealed this matter to the N.H. Supreme Court on May 16, 1990 pursuant to RSA 541.
11. The City did not, however, file with the Court for a stay of implementation of PELRB's decision.
12. The remedy ordered by the arbitrator to redress the subject of the grievance, the testing and selection process for the lieutenant's position which was not in compliance with the City's personnel rules.
13. The non compliance with the City's personnel rules rendered the old test procedure invalid.
14. That the City promoted two firefighters to Lieutenants based on the invalid testing procedure.
15. Firefighter Newbury was ranked fifth (5th) on the invalid list but ranked first (1st) on the new list.
16. The grievance procedure negotiated by the parties to the CBA results in final and binding arbitration.
17. That the promotions of Firefighters Paskalis and Lowd were made from the top

three candidates on the original list and that both were also on the top three of the revised list.

DECISION AND ORDER

After hearing all testimony from the parties and considering all evidence before the Board, PELRB orders that:

- A. The promotions of Paskalis and Lowd stand as both candidates were in the top three on both lists, and
- B. That Firefighter Guy Newbury should be seriously considered for for the next promotion to Lieutenant.
- C. The unfair labor charge against the City is dismissed.

So ordered.

Signed this 10th day of June, 1991.


EDWARD J. HASELTINE, Chairman

Unanimous vote. Chairman Haseltine presiding. Members Seymour Osman and E. Vincent Hall present and voting. Also present Executive Director, Evelyn C. LeBrun.